

# **U.S. SMALL BUSINESS ADMINISTRATION**

**San Antonio, TX**

**May 16, 2006**



## PROCEEDINGS

[START TAPE 1 SIDE A]

**MR. AL SALGADO:** Good morning everybody. Thank you for coming this morning and I'd like to welcome you to the USCA downtown campus. This is the home of the Southwest Texas Border Region SBDC covering 79 counties and 3 SBA Districts. So we're looking at a region from here to El Paso, Corpus Christi to Austin. Where—this is the home where we visit with, counsel and train 22,600 entrepreneurs. And the entrepreneurs, our clients, have received, last year \$66,000,000 in financing, so working with the SBA is our major partner, we're able to help our clients and entrepreneurs of South Texas.

In doing so we've also created 6,500 jobs, created and retained 6,500 jobs for businesses, small businesses in South Texas. I want to thank the US Small Business Administration and the National Ombudsman for what you guys do on behalf of small businesses in this great country of ours. We are proud to host you on our campus. And more importantly we are proud to host you at the Small Business Development Center in South Texas.

I'd like to welcome Tony Alvarez, the District Director of the San Antonio District. Tony brings a lot of energy to the District Office, certainly a lot of experience that small businesses can relate to and we have enjoyed working with Tony and we will continue to work with Tony for many years to come.

Tony if you will, come up and assist us with the welcome.

[Applause]

**MR. ANTHONY ALVAREZ:** Good morning everybody. Appreciate everybody being here so early in the morning; especially if you got past 281, god bless you, with all that traffic that has been out there with the Alamo film folks, with the motivational series that they've got going out there. I think we have our own right now in the next few minutes.

Again my name is Tony Alvarez; I'm the District Director for the SBA. I've been on the job now for about five months, starting in December. I have a background being in business, used to own 27 different franchise restaurants from Burger King to Little Caesar's, Applebee's and On the Border so I'm very much an entrepreneur and know the type of situations you go through especially also utilizing the SBA's 7A program, 504 and especially being an 8A contractor in the past.

I know sometimes how frustrating the system can be and that's why

situations like this where we have an open forum to be able to talk about and raise certain issues that may be of concern, to not only yourself but maybe other folks that are investing [phonetic] to be able to troubleshoot and be able to help.

I want to thank everybody for attending, for coming in from Washington to be here, but at this time I would really like to take this opportunity to invite up and welcome the Chairman of the Committee, Mr. Joe Shepard, who just flew in this morning from Dallas. Joe is the chairman and he's going to be introducing the Ombudsman and talk a little bit about the program itself. Joe.

**MR. JOE SHEPARD:** Thank you very much, it's a privilege to be here and again I want to add my welcome to Tony's and some familiar faces in this very good [unintelligible]. We have a new National Ombudsman in Nicholas Owens and I wanted to introduce him. Are you going to come up and say hello, or? Yes, okay. So, I wanted to, on behalf of the Board and the Office of the National Ombudsman wanted to introduce you to Nicholas. I'm going to tell you a little bit about Nicholas.

President Bush appointed him to this position fairly recently, on March 28<sup>th</sup>, 2006. And he's the fifth National Ombudsman for the United States Small Business Administration. You'll learn a little bit more about the program and the fact that it's young—fairly young compared to some of the other programs in the Small Business Administration of the Federal Government.

Mr. Owens responsibilities include leading the national effort on behalf of the nation's small businesses to insure fairness in the enforcement of Federal Regulations and initiatives that diminish disputes between small business and federal regulatory agencies. Mr. Owens is not too far away, a native of Mississippi, as a young entrepreneur in the media business that led him to 1996 to found Icon Group, a public affairs, communications and government relations firm. An ABC affiliate featured Owens as a great Mississippian for the next generation. His clients included National healthcare companies, Internet technology companies and financial institutions.

In 2000 he was named vice president of sales and marketing for a national based healthcare technology solutions corporation. He became politically active in 1988, where he served as a coordinator for US Senator Trent Lott's first senate campaign. He also worked on the campaign of US Senator Todd Cothram [phonetic] and most recently President Bush's campaign in his home state of Mississippi.

In 1994 he serves as part of Mississippi Governor, Kurt Fordyce's TEA Mississippi which was a legislative grass roots initiative. And finally before joining the Bush Administration in 2001, Ombudsman Owens

serves as part of the Bush/Cheney 2000 presidential transition team having served five years as a special assistant to the chairman and Director of External Affairs at the National Credit Union Administration, he understands firsthand the regulatory challenges faced by small businesses. In the position he served as a senior advisor on communications, congressional and regulatory policy matters.

Owens possesses an extensive background in local, state and national charitable and community services. We feel very fortunate to have him part of the office of the National Ombudsman and I know on behalf of myself and the other board members not only in Region 6 but the other ten total regions, that we're glad to have Mr. Owens on board. And I know that the office of the National Ombudsman staff is glad to have someone at the helm and the small businesses of America are in good hands. And we look forward to hearing from you a little bit. Thank you.

**MR. NICHOLAS OWENS:** Good morning everyone. I must say thank you for the gracious introduction. It certainly is a pleasure to be here in San Antonio. As he said I'm from Mississippi and it's always great to get back to this neck of the woods, if you will. To leave the Washington Beltway to learn what the challenges are for small businesses across the country. This hearing is about you and your concerns. And that's our primary focus here today. And my job, as Joe and Tony ably stated, it's to be your troubleshooter.

We cannot find a 100% positive resolution to each of your concerns every time, but we will commit 100% of our effort to working toward that. We work closely with 35 federal regulatory agencies to address concerns that you may have and the scope, which you'll learn more from Joe, of what our primary responsibilities are. But a few affiliates had accepted regulatory compliance, enforcement, penalty or a fine; we can assist with those areas. Areas where we cannot assist within our jurisdiction, we do provide a high level referral, if you will, to the agencies responsible. But we tell our folks this is Jose, the gentleman who helped put this event together and led it, so thank you for your work here, Jose.

But as we were talking the other day in the office, our job is to help navigate small business concerns in the rough seas of federal regulatory enforcement. President Bush says it very clearly, when he says that the role of government is not to create wealth, the role of government is to create an environment where the entrepreneur may flourish. The entrepreneur may flourish. And create an environment that has effective rather than excessive regulation is a critical component of that.

So today we will receive your comments, we will have those placed in

the record. We will be following up very soon with the respective agencies with which you're concerned with, and I want to think that the agencies that are represented here—I know I said earlier to the gentleman from USDA, these folks are here to support your efforts, certainly not to advocate against them. So they're here supporting a resolution that's one that is objective, independent to do a fair analysis of your issues.

All the agencies may not be issued today, I mean, may not be present today to cover your issues, but in our office, we will certainly provide that to them. Now Joe, I believe you're going to introduce, if we have any board members via telephone, which, when one explains the board, which he will, it's a three year term that the SBA administrator appoints Joe and his colleagues, five, to cover this region for three years. So they're volunteers, serving as the local eyes and ears so we can learn from and listen to your concerns, both on a local level but also nationally. So they're a very important part of this process and thank you very much.

**MR. SHEPARD:** Well I did want to also welcome the federal agency representatives, and you see on the program a little later after the presentation and before we have comments from the small businesses that you all—if you'd just tell us who you are, say hello, introduce yourself and tell us about your agency. That's be very helpful and certainly appreciate the small business owners and representatives who are here and look forward to hearing your comments that you'll be providing to us today after the presentation. The—well why don't we go ahead, we can leave that slide up and I'll go ahead and introduce our PowerPoint presentation just to educate you a little bit more about this program.

We're going to spend some time together this morning talking about the subject of regulatory [unintelligible] on small business. Each year as Ombudsman Owens said we hold a number of these hearings like this one across the US to educate the small business community and receive comments from small business owners and representatives about the federal regulatory experience.

Our US Congress created the Office of the National Ombudsman and the RegFair to protect small business from unfair or excessive regulatory enforcement and compliance actions by federal agencies. Congress authorized the Office of the National Ombudsman. The National Ombudsman and the Regulatory Fairness Board to oversee all federal regulatory enforcement activities on small businesses through what's called the Small Business Regulatory Enforcement Fairness Act of 1996. The act is also referred to as SBREFA. We can go ahead and have the next slide.

SBREFA is a result of a White House small business conference initiative actually that began in the Clinton administration. As you can see from our current President's comments, there's a sensitivity to excessive regulation of small businesses. Congress created and passed SBREFA because of the vital roles small businesses play in creating jobs and growing the US economy. We believe the Office of the National Ombudsman assists in safeguarding small businesses and their effect on the economy and the program is supported by Congress, the President and certainly will be supported by future administrations.

As many of you know, the President appoints the Small Business Administration Administrator; the Administrator then appoints the National Ombudsman and the Board, as well as the executive branch, the President. The office of the National Ombudsman is an independent entity. It reports directly to Congress, however the office of the National Ombudsman resides inside of the Small Business Administration and as a result it has the resources and assistance of the SBA to carry out its mission as a troubleshooter for small business, which is why Tony and his staff graciously are here and taking care of us today.

This slide really summarizes several points. One is to talk about the Ombudsman's commitment to assist with keeping small businesses focused on being producing. It is really a primary commitment from the Ombudsman and the office. The way the Office of the National Ombudsman or the ONO does that is through some of the activities listed here on this slide. The commitment is to each small business but it's also for the welfare, collectively of the US economy.

These are some of the ways the Office of the National Ombudsman and the National Ombudsman fulfill the commission. The public hearing we're having here today is actually mandated by SBREFA.

And let's talk on this next slide about whom we can help. Some of the bullet points you see on this slide, the role of the troubleshooter is really with federal agencies, the office and the board and the Ombudsman can't help with state issues. In regards to comments, once they're received and substantiated, they're directed to the affected federal agency's Inspector General or another senior agency official with the expectation of a timely response.

These are some of the examples of the types of comments that are received, unfair regulatory enforcement, actually we'll go to the next slide that's going to say repetitive audits, and there we go. Greg, very good. And you can see that typically these kinds of comments typically include examples of unfair enforcement, oppressive inspections, excessive fines, unwarranted penalties, retaliatory behavior or redundant audits.

We do actually get comments that are positive in nature as well; don't need to dwell on the negative. But we do get comments about the different federal agencies and the help and the rapid response that [unintelligible] when the Ombudsman has made an agency aware of an issue, they oftentimes will have a small business saved [phonetic].

You know it just took a little push from the Ombudsman's office and the agency took care of it. And so this isn't intended to—you know there are some very, there are some positive comments that we've received as well.

Improving a regulatory environment in which small businesses operate depends heavily on small businesses providing comments about their encounters and experiences with federal agencies, and that's what the comment process is about. If we don't receive any comments then it's obviously difficult for the Ombudsman and his staff and the board to address any issues that might exist.

Next we'll talk a little bit about the annual report to Congress. Congress monitors the relationship between small businesses and the federal agencies that regulate them through an independent report that is received each year from the Office of the National Ombudsman. This is an example of the 2004 National Ombudsman report to Congress. All of these are online at [sba.gov/Ombudsman](http://sba.gov/Ombudsman). The office is in the process of preparing its fiscal year 2005 report to Congress. You can read it and find out more about this again, this is just a SBREFA mandated report to Congress that informs the Congress every year about this relationship between small business and federal agencies.

You'll notice when you do look at the report in the future, it evaluates the enforcement practices of the various regional and program offices for each federal agency. The experiences with the regulators by the Ombudsman, from the board and from small business owners are summarized in the report. The report grades from A to F each federal agency's responsiveness after receiving comments from the Office of the National Ombudsman on behalf of a small business. So there's actually a physical report card. I wouldn't expect you to even begin to see that of course, but there is actually a grade on responsiveness and several other mandated criteria in this report. So again, a very effective tool in communicating to Congress, the activity of this office.

Let's talk a little bit now about what to do on this next slide. There are multiple ways to submit comments. This is certainly one of them today, is to be here physically and to be present and we'll be hearing from some small businesses this morning. And so the hearing process like we have today and we have across the US is one way, but the office really tends to be a 7 day a week, 24 hour a day receiver of comments in terms of being able to mail in your comments, fax in your

comment, e-mail your comment. There's a comment form on the website, so it really provides small businesses and their owners and representatives with multiple ways to provide comments to the office so that we can begin to take action.

Let's talk on this next slide if we can about how to file. Small businesses have a choice regarding their level of disclosure. That's really what we're talking about here. It could be very, very, very tightly guarded in terms of the information that's provided or there can be full disclosure. Again there's—we're sensitive to confidentiality and that's the purpose of your choice regarding your level of disclosure that you choose to take.

A little bit on the next slide about helpful hints. This is just another option a small business has to remedy in situations by providing comments and asking for assistance from the Small Business Administration. It's a benefit of being a United States based small business, to have a government that cares about you, that cares about your contribution to the economy and wants to hear from you and you have a supportive office, you've got a supportive Ombudsman, you have a supportive board. And this is a way for among all your other legal remedies there may be or other actions you may take in terms of contacting the agency directly, this is the Ombudsman's office is another remedy.

Let's move on and talk a little bit about the National Ombudsman. Oh I see what we've got here; we've got all sorts of stuff flying around on the screen there.

I'm looking at just a band; you get all the information at once.

**FEMALE VOICE:** Do you need me to back up?

**MR. SHEPARD:** No, you know, I tell you what. Let's just move on to the next one, I didn't realize we had that fantastic point by point automation. We'll just move on to the next slide and talk about—thank you. We'll talk about the jurisdiction of, yeah, and because you know [unintelligible].

The Office of the National Ombudsman, the National Ombudsman seek to find resolution on behalf of the small businesses by making the federal agencies aware of specific situations, again we're not going to know about it unless you tell us about it. The office of the National Ombudsman is a reporting entity. It reports how agencies respond to small businesses. It reports how agencies treat small businesses so these are some issues that you can see.

These—I think we have uh, Tony, your staff's probably made some copies of this presentation as well, possibly? Or?



**MR. ALVAREZ:** That's right I think there might be some on the back table.

**MR. SHEPARD:** Well, again, just some of this stuff we're going over, if we're going over it too quick and you certainly want to share it with your colleagues, not only are there copies of this here, present, but the presentation is on the website as well. So feel free to refer it as a presentation to some of your colleagues.

The next slide we'll talk a little bit about the Regulatory Fairness Board, this is just a summarization of some of the activities of the board. As you know, we're holding a regional enforcement hearing here today in San Antonio, again hearings are held throughout the United States each month to receive comments from small businesses and the intent of the board is to extend out beyond Washington, D.C. and to know each quarter of the United States and we have board members in Hawaii and Washington State and all across the United States. So it really just gives you another vehicle with another opportunity to—another point of contact if you will.

As we go to the next slide, you can actually see the listing of the board for SBA Region 6, and where some of the board members are located. SBA delegates or divides up the United States into ten different regions. We're located in Region 6 which is Texas and it's just the State, so being Texans, this is your Texas board that we also take care of the contiguous states around Texas. Again the intent of the board is to be local so you can call and visit with this, and so we encourage you to do so.

If we move to our next slide, we'll begin to conclude here the presentation. We always like to share some examples of how the Office of the National Ombudsman and the National Ombudsman [unintelligible] small business again of some of these items are on the website, but the intent here is to—you know the office really does have an impact. It has an impact on a one person owned small business all the way up to the largest [unintelligible] small business.

And the, you know, I just can't—we can't collectively drive home the point enough that the purpose of this is to keep you healthy, to give you an opportunity to have a voice, to have a troubleshooter for you, if you're having some problems with a federal agency and we can assist you in resolving those issues. The federal agencies, as some of them may tell you when they stand up are very receptive to hearing from us and they want to help you as well.

Again, we don't live in a perfect society and communication isn't always as good as it can be and this is really a troubleshooter, it's a go-between, it's a conduit to link that small business concern with that federal agency. And these are just some examples of the difference

that the office and the Ombudsman and the board are making on small business.

We've got just a little bit more here, some useful websites on this next page. This is going to be more helpful to you if you go to the second one there, the [sba.gov/ombudsman](http://sba.gov/ombudsman) is actually where you can go to file a comment and you can get that summary of some of the things that we've talked about today. And I would encourage you to do that. And I think that the last one we can probably just leave this one up. But this is the one pager of the toll free number, some of the 24/7 I mentioned about being able to call in, to fax in and e-mail, and to visit the website, multiple opportunities to provide comments and seek assistance from the Office of the National Ombudsman.

That pretty much concludes the presentation, I hope that was helpful and for those of you who hadn't seen that before you learned a little something, but what I'd like to do now, Ombudsman Owens and I talked about this was if some of the regulatory agencies that are here could just stand up, introduce yourself, tell us a little bit about your agency. We're delighted that you took the time to travel and be here and be nice to hear from you and then Ombudsman Owens will open the comment period.

**FEMALE VOICE:** Federal agency. [Unintelligible] present.

**MR. SHEPARD:** [Unintelligible] be whoever's like to go first. We'd certainly like to hear from you.

**MS. MELEA CROUSE:** This is Melea Crouse with the US Army Corp of Engineers, Fort Worth District.

**MR. JOSE MENDEZ:** Stand by everyone on the line.

**MR. NICK FLORES:** This is Nick Flores, District Director in San Antonio, Wage and Hours Division for the US Department of Labor. I represent of course the District office in Region 6, which is based in Dallas and our region is pretty much the same as the SBA or the SBREFA jurisdiction.

The work in our division recognizes the important role of small businesses play in our economy. We understand that creating and sustaining a business brings many new responsibilities including compliance with federal labor laws. When you have questions, if you ever do and I'm sure you do at times, with wage and hour laws, I encourage you to visit our Internet site at [www.wagehour.dol.gov](http://www.wagehour.dol.gov). Or you can call us at our 1-800 number, it's a long number, but I will be around and give you whatever information you need with regards to how to contact us.

So if you want DOL Interactive, use the Internet advisor and that's a system called E-Laws, which stands for Employment Laws of [unintelligible] Workers and Small Businesses. Once on our website you have access to a number of compliance assistance materials and tools, such as fact sheets, seminars and links to regulatory picks, and preambles.

In addition it has also started to post opinion letters, so if you have—if you are in need of an opinion as it applies to a question you have about an application of some of our regulations, feel free to access that link. And you will search of course by subject and get whatever you need from there.

I would like to---I'll remain here the rest of the morning if you have questions, and of course, we enforce many federal current labor laws starting with the Fair Labor Standards Act, which pretty much administers and enforces minimum wage, overtime, child labor laws. We also deal with the Family and Medical Leave Act, migrant, if you will, worker protection act, dealing with of course the people that harvest the crops in the field, some of the Occupational Safety and Health standards in the field as well. So thank you again, I'm Nick Flores and my local number is 210-210-3080.

**MR. SHEPARD:** All right, thank you.

**MS. SHERRY SAUCERMAN:** Hi, I'm Sherry Saucerman and I'm with Internal Revenue Service and I'm actually [unintelligible] with Internal Revenue Service but other than everybody thinking of the compliance issues that we deal with, we also are committed to getting the information out to the small business owners so that they can properly meet their compliance obligations.

And we have information on our website; on our [unintelligible] we have a special website just for small businesses. Go to [irs.gov](http://irs.gov), click on business or you can just go to [www.irs.gov/smallbiz](http://www.irs.gov/smallbiz), with a Z, it will take you to the small business website. It has a lot of information for you there. We also have small business products which are—I have some of them in the back that you can pick up. They are free. You can order them free of charge from the [irs.gov](http://irs.gov) small business website. There's a calendar, there's a resource site. There's also a DVD for giving you a small business workshop.

We also have some programs for bringing things to our attention for industry issues or big burden reduction. We've had a few burden reduction issues that as small business owners you may have notices such as the simplification of the form 931, the 940 has been simplified. That first new 940 will be due the end of—in January of next year. We also started the 944 project for small businesses with liability of \$1,000 or less. That was also out of the taxpayer burden reduction and they

have both pages on our website so that taxpayer burden [unintelligible], search taxpayer burden reduction will take you there. I have information applying in the back on the 944 project and I'll have information on taxpayer burden reduction issues and industry resolution and a few other things that are back there.

We also have flyers out to help you avoid—provide information on scams that you get promoted to. The scams—the advertising for those scams is so convincing, so convincing, I've known some very experienced and intelligent people that have fallen for those scams and they end up being hurt financially because of them. And we are committed to getting information out to help you avoid that. We have our dirty dozen top scams that come out as a news release every year. You can subscribe to getting all our news releases. You can subscribe to small business newsletter; we have a lot of ways you can get information for it. And I have about—information you can get at the back, and I'll be here all day too. Until the end of the presentation, thank you.

**MR. RODNEY KLEIN:** My name's Rodney Klein and I work with the US Equal Employment Opportunity Commission here in San Antonio. As many of you know, the EEOC, we investigate claims of employment discrimination. And that's discrimination based on race, color, religion, gender, national origin, age or disability. Most of what we do is we take those complaints and we investigate them. But we have a couple of things we do for small business owners. We think it's a big help.

One is we have a mediation service so instead of going through an investigation you can actually have your case mediated which has been a very successful program. It's the largest employment mediation program of its kind in the country. We mediate a full two-thirds of all the cases that—or successfully mediate two-thirds of all the cases that go into the program. But more importantly, 95% of all employers to go through the program, even those that don't successfully mediate, like the program and would do it again. So that's one thing to help business owners alleviate the cost and the time and expense of going through an investigation.

What we also have is training and outreach which I'm the training and outreach coordinator for our office. We provide a full range of training services for businesses, particularly small businesses to help them understand the law, provide training to their staff and almost all of those services are free. So I have some brochures in the back, if anyone is interested in our training services.

Also we have a very good website. [www.eeoc.gov](http://www.eeoc.gov) and we have a section on there, a webpage for small business owners. But for those of

you that like the more personal touch, I have cards, so feel free to give me a call. Come get a card from me. If you have any questions about the law or what we can do for you, send me an e-mail, give me a call, I'd be more than happy to answer your questions. Thank you.

**MR. MICHAEL McDERMITT:** Good morning, I'm Mike McDermitt. I represent the National Taxpayer Advocate for the Internal Revenue Service. The National Taxpayer Advocate is very interested and concerned about issues that affect small business owners, small business taxpayers and we routinely attend these types of meetings to really be the eyes and the ears for the Advocate on what issues and concerns may exist that the Advocate might be able to do something about.

Sherry's already talked a lot about the work that the IRS has done to help small businesses. The Taxpayer Advocate Service works hand in hand with the IRS to try to facilitate changes that help small businesses meet their tax obligations.

One of the other things that we do routinely is the Advocate reports to Congress yearly on the most significant problems facing the American taxpayers. So my purpose really for being here is to be the eyes and the ears for the Advocate, try to pick up on what some of those concerns and issues might be, take them back and assist my boss in reporting to them. The tremendous amount of overlap and similarity between the Ombudsman and the National Taxpayer Advocate, I think we have some very common interests and hopefully we'll hear some interesting things today. Thank you.

**MR. SHEPARD:** Thank you. Anyone else?

**MR. JOHN ROGERS:** This is John Rogers on the phone line. I'm with the Army Corp of Engineers in the construction contracts branch. I just wanted to say a few words. The Corp of Engineers, Fort Worth District awards, takes great pains to award contracts to 8A and other preference program contractors and small businesses. We cover most of Texas with military work for the Army and the Air Force construction as well as 25 lakes in the State of Texas, providing construction and services.

We also monitor our subcontracting plans with large businesses or other than small businesses that have subcontracting plans. We have awarded in the past mentor protégé contracts to assist 8A contractors and small business so we are quite active in small business and look forward to hearing the comments today. Thank you.

**MR. MENDEZ:** Go ahead the rest of the federal agency online report.

**MS. MELISSA MARSHALL:** This is Melissa Marshall from EPA, also on the conference line. I'm sorry I'm not able to join you, but I truly thank SBA for providing the conference participation. It's great. I just wanted to say briefly that the EPA is in the business of protecting human health and the environment. But our enforcement program for ensuring compliance is actually in two parts. Part of it is traditional enforcement actions and the second part is environmental compliance assistance. Compliance with the environmental laws.

And compliance issues can be particularly important to small businesses in the environmental arena. To help with that EPA has a very—has an extensive compliance assistance program, much of which can be accessed through our website at [www.epa.gov/compliance](http://www.epa.gov/compliance). We have an extensive array of information drawn from federal, state and private sources that include checklists, guides, note—compliance notebooks, and it's specific—much of it is specific to 35 different industry sectors. And in choosing those sectors we have emphasized those that are heavily populated by small businesses in an effort to answer your compliance questions and needs.

We also do workshops, site visits, training. Just wanted to quickly say that we do have enforcement, you know, the enforcement program to ensure compliance also. But it's—we primarily—EPA primarily takes action against large businesses there. They're our primary source of business here.

But when we do take action against a small business, I want to assure you that there are protections built in that we do have policies. If you settle with us, and can demonstrate a financial inability to pay a penalty or pay what we are looking for, then we take that into consideration and small businesses are given significant penalty breaks.

We also have a small business compliance policy for when small businesses voluntarily audit for problems. Come in, discuss them with us, promptly correct the issue and in 2005 175 small businesses took advantage of this policy and not a one paid a single penny in penalty. So anyway, I encourage you all to check out the website and see what we offer in compliance assistance. Thank you.

**MR. SHEPARD:** I just want to comment, we want to hear from some of the rest of you on the phone that haven't had a chance to speak. You don't have the benefit of seeing our agenda we're at 9:45 and we've got calls from the Department of Labor about ready to speak, but if you could briefly introduce yourself and your agency, we'd love to hear from the remainder of the people that are on the conference call today. And then we're going to get started soon with the comments.

**MS. CROUSE:** Hi this is Melea Crouse with the US Army Corp of Engineers, Forth Worth District. We have numerous people here

at our teleconference meeting right now. We're very eager to hear the comments that are going to be said. Mr. John Rogers has already spoken about what we do provide for small businesses and we just want to thank you for the opportunity to be here.

**MR. SHEPARD:** Glad you're here.

**MR. MICHAEL ADAMS:** Yes, my name is Michael Adams. I'm with the Mine Safety and Health Administration in the District Office of Dallas, Texas. In the Mine Safety and Health Administration we enforce—we have the enforcement of 30 CRF and the Federal Mine Safety and Health Act of 1977. That our priority being safety and health of the miners that are important in the nation's mining industry. Our goals are the elimination of deaths and serious injuries from unsafe and unhealthful conditions or practices in those mines that cause grief and suffering to the miners and their families.

We have a wide variety of services other than the enforcement that we work with the operators, that being training, we provide a lot of outreach, compliance assistance when needed. We do a tremendous amount of partnering with the mining industry with those people in the mining industry that are interested and proactive enough to want to take that step forward and actually partner with the agency in preventing deaths and injuries at the mine sites. We do have an online webpage, [www.msha.gov](http://www.msha.gov) for anybody interested in getting on there. Thank you.

**MR. SHEPARD:** Anyone else on the conference call that'd like to introduce themselves? Tom if you want to go ahead—

**MR. NICHOLAS OWENS:** How many other agency representatives? We've got two or three more or no?

**MR. SHEPARD:** Okay, maybe you next and then we'll get started on comments, sounds good.

**MR. THOMAS HICKS:** Okay, I'll go quickly, people—who haven't had a chance to go to RegFair and I think this is about my 100<sup>th</sup> RegFair hearing in the last six or seven years, so. My name is Thomas Hicks; I'm from the Office of Small Business Programs in Washington, the US Department of Labor.

All Small Business Programs is a non-enforcement agency and I think we're one of the few federal agencies that have full-time people to deal with implementing SBREFA. Our responsibility is to help small businesses understand the user regulations that the Department of Labor administer and we have several compliance assistance tools to help small businesses around the country.

I have some compliance assistance materials in the back that have all the information about our federal enforcement agency within the

Department of Labor. One of the unique things that we also get in our office, we established a toll free phone line and have small businesses call in if they have issues with rules and regulations regarding Department of Labor enforcement actions.

And one of the reasons why we did that is because some small business owners think that if they call [unintelligible] see about an issue or problem the next day they might be knocking on the door because—to deal with that problem. So what we did is we established a toll free phone line that allows small business owners to call in our office which is a non-enforcement agency. We take their questions to one of our five enforcement agencies to get you an answer and then we call you back and contact you with reliable information.

One—also things that we do is we receive comments regarding any enforcement action within the Department of Labor so if you have an issue or concern regarding one of the Department of Labor agencies then we send that comment to the Ombudsman's office. It comes to our office before it goes to that Department of Labor agency. We review the comment; we send it to the assistant secretary who is the highest ranking official in that department of labor agency. We receive that comment back, substantiate the information. If we're satisfied with the information that they provide to us then we send it back to the Ombudsman's office.

I'm here today to listen to anyone who has any issues or concerns regarding the Department of Labor agencies. Another thing that we also do is we do seminars and workshops around the country. As a matter of fact when we leave here today we'll be doing a small business forum in Dallas on Thursday that will include the Wage and Hour Division, OSHA and the Texas Department of Labor.

So if you're a trade association and you want to do something similar to that, feel free to give me a call also. Thank you and welcome to new Ombudsman we're looking forward to working with him to ensure that the Department of Labor helps small businesses to the fullest extent possible. Thank you.

**MR. SHEPARD:** Thank you, Tom. Tony, do you want to take a moment to make the introduction?

**MR. LANCE KOSUB:** [Unintelligible].

**MR. SHEPARD:** Yes, absolutely.

**MR. KOSUB:** My name is Lance Kosub; I'm here to represent the Dallas District Office of the United States Department of Agriculture Food Safety Inspection Service. I've been asked to come here to report on any concerns with federally inspected meat plants, facilities, so, thank you, good to be here.



**MR. ALVAREZ:** Before I forget, because usually this happens to me every once in a while, I want to appreciate the fact that our staff people and Lucy Maldonado was taken to emergency last night. She's one of our staff members and she, together with Jose Mendez put this arrangement together, so I want to thank Jose and Lucy for all their hard work over the last few weeks. And I failed to also introduce Fernando Guerra who is our 8A contractor from our staff and Cindy Solano, also is the lender relations specialist and at this time if Pam, I can introduce Pam Satyea [phonetic] that oversees both of those departments, come on up and talk a little bit about our guidelines for today's hearing. Thanks.

**MS. PAM SATYEA:** Thank you. Good morning. Let me just set some ground rules for everyone of how this will work. Once you come up to give your comments. You're going to be limited to ten minutes. If you see me stand up over here, I will flash you with a sign that says your time is up. Okay, that means you will have about two minutes to wrap it up. After those two minutes, it's over with, and then I will give you the stop sign. All right? So just to know beforehand what you'll see me doing over there.

Since this is a public and open forum, we ask that you present your comments in a respectful manner to our guests from Washington and to those in the audience. We have each of you—hopefully each of you has the agenda so that you will know in what order you will be coming up in. The first one will be over the telephone, Lynn Cardell, or Caldwell. The next will be Danny O'Dell, then Mr. Phil Howry, Margo Pena, Abe Juarez and then if we have any walk-ins. Okay? Any questions? All right.

**MR. ALVAREZ:** Thank you. All right we're going to change the agenda just a bit. So Mr. Howry if you would begin? And then Ms. Caldwell, we will begin with you on the telephone following Mr. Howry's comments. Thank you.

**MR. PHIL HOWRY:** Thank you. I appreciate this time to be here. First of all let me say that I've been contracting with the federal government, federal government agencies for the past 24 years, and 25 years now. I started in 1982 and 11 years after being in contracting, I got into the 8A program and '92 and operated in that program and graduated in 2002 and I continue doing the same work that I did since 1982. So it seems to all be in 2's there.

First of all, also, I'd like to tell you that I'm a firm believer after all those years and that experience that reasonable people normally can come to reasonable solutions about things. The fact of the matter is they simply just have to understand what the issue is and be made aware of the issue.

I truly believe in this particular case that I presented to the Ombudsman's office today, is a prime example of that one situation where we have a contract that has gotten a little bit off into the ditch so to speak and it's not any one particular person's fault.

On this particular case we have had four different quality assurance personnel on this project. We've had two different resident engineers. We've had three different area engineers here in San Antonio and we've had two different contracting officers. We started off with Valerie Sands and now we have Lavette Buford [phonetic].

These jobs and this job was a very complicated project. It's located in Laughlin Air Force Base in Del Rio, Texas, which is some two hours west of San Antonio. It is not the labor pool Mecca of skilled labor in the world and it's certainly not the vendor and supplier hub of the universe. It's a very difficult place and for those people that have worked there, it's a very difficult place to work.

Regardless, we finished one project there up to this point a security forces project, about a \$4,000,000 facility and then we landed this \$7, and I think it started off about 7,400,000 million Wing Headquarters facility, started approximately 30,000 square feet. The Wing Commander's house also has the courtroom, the attorney's offices and that sort of thing, very nice facility. And it has wall sconces from Italy, has fabric wall covering, has wood chair rail, this is very—it has an elevator, a very sophisticated building.

This project started off, we've to this day, and we have 33 modifications on the project. Now a modification can encompass more than 1 change, and in fact, these do. We are upwards to 90 something changes involved in 33 modifications or as the Corps call them, POOS [phonetic]. We're up to POO 33.

Throughout all those changes, as you start thinking about all the personnel that has changed, you can see that there is some room for some issues to fall through the cracks. And sure—and in fact that's basically what's happened here. We had some agreements; we had some issues going early on. The whole project changed. We had a different agency was going to come into the project, some of these changes changed before we ever got started. Change the peer foundations in the building, all the way up through the structural steel.

So before we ever started we had huge change order of 45 something days, 60 days before we ever started. And once we did get started we ran into a Com line that was in there. It was supposed to shown to be excavated, totally taken out. Well that didn't happen. That's the main com line; it can't be until it's moved.

So we had to leave that at our side work, we had to adjust our

foundation construction, our site work construction, and so it goes on and on and I can continue on, but first of all I'd like to say this started off to be an approximate 2 year project. In the construction schedule we had—I think it was 547 days to build the project and then on another item we had owner move-in 60 days between phase one and phase two, with no liquidated damages.

So what we did when we made our schedule, we put the 60 days in the schedule but what we failed to do, we Bill Howard, we failed to suspend our time in this big primavera project schedule two years out there. We failed to suspend time at the beginning of that move in, and then begin it again at the end. Well, we caught—we caught the error a year ago. We raised this error—this discussion, and to my knowledge and today—as of today it's still pending. And so now it never went away obviously.

So as we continued working on the project, through a series of yellow-zone meetings, red-zone meetings with the user, with the Air Force, we came up with a design and the entire project's timelines were changed in direct proportion to modifications that were issued. So January the 9<sup>th</sup>, we'd come to an agreement that we're—the Air Force is going to take possession of parts of this building.

So what that tells you is, to most of us here involved in construction, the building was substantially complete for them to take five areas of this room, which they did. Now this was the important aspect for them to do, they took the communications rooms, they took what they call the FPOT room, which is a secure area, which is totally one floor and then uh, one side of the building and then the courtroom and the commander's conference room. Big square footage of the building.

And they moved—the Air Force then brought their sub-contractors in, with Motorola and other communication sub-contractors to begin installing upwards of \$3,000,000 and \$4,000,000 of [unintelligible]. So when they took control of this facility, they also took control of access of it. We have stocker [phonetic] locks, combination locks, electronic locks, so they had full control of it.

At the same time, per agreement with the Air Force and the Corp, the owners began moving their furniture into our rooms and the agreement was to store them in the middle of the rooms so that the rooms could be “punched out”, as we went through the process. Some of the rooms were carpeted, they were painted, ceiling tiles were in and everything was ready.

Throughout the process, uh, we went on and as these communications sub-contractors needed, they had to work in the facility. They had to put their wiring and connect their wiring to our systems, which we had our generators hooked up, we had our uninterruptible power supply

system, which by the way was supplied by the Air Force. It arrived late, when it did arrive, we had to modify our wiring to fit the up [phonetic] system.

So we worked with the Air Force. We felt like we continued working with the Air Force to accommodate this work which taking the cable trace out and wiring informa-, wiring all the systems back in.

Well what—the troublesome part came when we'd not received a pay request for 60 days. We've had—we've been waiting for a pay request and we've had a schedule issue. Lo and behold, we're out of time. So I said well, what about the 60 days. We've got to get this 60 days resolved.

And the answer I received was well, no, the contract's over. And we're going to assess the liquidated damages. I said well it doesn't seem hardly fair but if you want to do that, then let's go back—if you're going to assess them on the 60 days, how do you justify that? The schedule clearly says there are no liquidated damages on 60 days. Even if you don't give me the suspension in time, how can you adjust—assess damages on the 60 days, at least give me that.

So again, I'm raising this issue now and I truly believe, and I know these gentlemen and I know these folks in Forth Worth that are listening in, they are truly reasonable people. But what I do know that happened is that in the process of changing all these personnel, this whole process got completely out of—out of whack. It got out of hand.

So it's really not any one person's fault in here. It's not any one person's fault. And I'm not here today to fix blame. What I'm here to do is to try to fix the problem and my appeal to the Ombudsman is clearly on that level.

Believe me; I've got the other route. I've—Fernando Guerra remembers the route that we went and when we protested a GAL decision from Sister Corp office, all the way to GAO and you know, I tell you, and we won. Or we were sustained as it turned out, but we didn't win. The only people who won were the attorneys. So the Corp lost, I lost, everybody lost. So to me, I realize that's not the answer.

What I'm here today to do, is to bring this, bring this issue to this group hoping that—and I'm well aware and assured that the folks in Forth Worth or even higher are reasonable folks and I know that we'll come to a reasonable conclusion to this. Thank you very much for your time.

**MR. SHEPARD:** Mr. Howry, just quick few questions for you. When did, uh, well have you submitted a comment form to the Ombudsman's office?

**MR. HOWRY:** Yes sir I have. In fact, all these documents have been presented, that I've supplied and of course the Corp has their documents.

**MR. SHEPARD:** Sure and sufficient substantiation of the claims and—

**MR. HOWRY:** [Interposing] Correct.

**MR. SHEPARD:** —your issues are with that comment form so.

**MR. HOWRY:** That's right.

**MR. SHEPARD:** So that the Ombudsman can look at that and process that, okay. Very good!

**MR. HOWRY:** Thank you.

**MR. SHEPARD:** Thank you for your time; we appreciate your comments today. Next Ms. Caldwell, are you on the phone?

**MR. MENDEZ:** Ms. Caldwell?

**MR. SHEPARD:** Perhaps not. Well, we can move on, Mr. O'Dell?

**MR. DANNY O'DELL:** Good morning. My name is Danny O'Dell. I own Windy-Aire Company, I'm—I was born and raised here in San Antonio and [unintelligible] Blanco in my business is Blanco right now. We started my company in I guess I started doing business with the government in 1988, I mean 1998, 1999. So I pretty much have evolved as everybody else has with this communication on the Internet and you go look at the bid and put in bids on the Internet.

Oh, I'm sorry. Thank you very much for allowing me to air my views here. I'd like to just consider this a concern, not a complaint because I've done my complaints. Once the initial, initial loss of money was gained, I uh, --we got very hostile and I wrote letters and talked and everything else, it just got no, no remedy.

I only have a short time so I want to say this in a way that you not only understand what I'm going to say, but I want you to get the feeling for it too. Last night our President spoke last night about this immigration and whether you stand one way or the other, his decision was that each one must go—this 12,000,000 to 20,000,000 people that are here illegally must, must uh, pay a fine for breaking the law.

So he's stating that we are a law country of laws, and yet, uh, in those at least six years now, over the time that I've been processing, I could see clearly that the majority of the contractors and the government do not specifically follow the law, they follow their own code of laws if I

can show that. I present the Ombudsman three separate issues and let me just express them to you.

Now at [unintelligible] Air Force Base, I contracted, they called me and said hey, I don't think this is open and competitive now, there's even a problem with that, but I'll get to that. The [unintelligible] Air Force base, it was about mixing kilts [phonetic] to get [unintelligible] stubborn [phonetic]. Well I did it and I sent it in to them. Well I never heard back from then, six months go by and they—long past the deadline for the first article testing, then they come back and say that's not what we wanted. So we renegotiate, go back again.

Well over a long period of time, does the same thing. They don't get back. I called them and called them and finally come back and they sent it back to me, they said it was too rough, the bottom was too rough. Well what they had done was they had done destructive testing to it and they had tested the glue in some fire and make sure—you don't do destructive testing on the first article, that's finished product. And yet they had done so.

So when I complained about it the lady just told me right, you're a liar. Right to my face, so I mean, right to my ear, so of course, I responded in kind. Pretty soon we're having a heated argument. And that's how it ended it.

I went to the Ombudsman, I used—I sent a letter to our President and I sent a letter to the SBA and e-mailed every SBA... and all this time, I finally realized, it gave me a thought—they don't have enforcement authority. Fernando doesn't wear a gun, he can't go out and collect my money for me, and it's just the way it is. You have to be prepared.

Are we going to take this to court? Well it's going to cost more. This particular contract was only \$16,000. A lot of times when you go into court, the courts are even biased against you suing the government, so you have to really get permission to do so and you have to do it at a reasonable cost. \$16,000 is not generally a reasonable cause to take the government to court.

Okay. The second issue is that I already Redstone, Redstone [unintelligible] in Alabama. At the time, I got in the process where I got very good a bidding and because I'm not in construction business, I'm bidding on commodities and manufacturing processes overall. So I was bidding four or five different contracts a week for a long period of time so I had a slew of them and I would bring my price down and down and down until I said all right, I'm going to bid this one so low that, just price, no cost, I'll just do it my own self for free, just the cost of materials. And when it came time to award the contract, they stuck their head in the sand. They pulled the contract out; this was after the

bid wins, and then a month or so later went back onto the [unintelligible].

Now the first thing I'd like to say so I can get everything in here, is that uh, you know of course being 8A, you get a certain stigma as I was explained to. But I notice before when I met people in 8A, I would go in there and check out the pro-net [phonetic] and sometimes they'd say they were making \$6,000,000 a year. I mean you couldn't possibly make \$6, 000,000 a year because I just talked to them, but that's what it said.

So what happened on the CCR, they said they realized that too so they went back and they said well you have to allow us to see your Internal Revenue Service, I mean your IRS statements. We want to see them all. Well we already give those to the SBA. We give our personal income tax statements and our business, so that's a requirement for being 8A.

Well what goes on here is that we're allowing the two different divisions there, one is to tell the buyer how much we do per year, but also to allow them the right to see our tax, income records to make sure that we're telling them right. I know for a fact that when I see someone who's making \$10,000,00 a year, I think that that's a stronger business than somebody that's making less than \$1,000,000 a year. I said that's [unintelligible] it's bias, it's me. And I'm a businessman, so I know advisors to buyers.

So I guess what I'm trying to say is that overall, all the hundreds of times I've bit and I have met some really nice people. They've called me up and they've said hey you underbid this; you can't possibly do that for that. And then I've had people just told me no, like Mr. Roper in Tinker, I've bid in Tinker Air Force base. I get the call from Mr. Roper; he says they're never going to do business with your type of business. And I got in an argument with him. A couple of months later I called up there and it ends up he picked up the phone again.

So there I was, we made up for our differences, but he explained to me that they just don't do business with 8A companies and that's a fact, so, so. So far as action does not work and hasn't worked as long as I've been in business. Now I've learned a whole lot. I've taken a whole lot of classes and I've—the things I have learned from the SBA, they've helped me tremendously and they got me to where I could systematically bid and I could—professionally assist [unintelligible] know right where it is in every detail of the contract, but still cannot get it. So that's what I wanted to air today, and I thank you very much.

**MR. SHEPARD:** Thank you. Mr. O'Dell, you're—you have sent in your comments on this.

**MR. O'DELL:** Yes I have. And I also faxed a copy to you.

**MR. SHEPARD:** Yeah. Just one thing about that. The—this is—again we always try to posture so that we can help small businesses to the extent that—but what I'm hearing from you is some frustration about the process and to the extent that there's a regulation that drives that process, um, you know, that regulation could be deemed somewhat onerous, so I think when you—when you think about it in your own mind in terms of communicating with the Office of the Ombudsman, it might need to be from that, from that perspective in terms of the regulation [unintelligible] onerous, because it's difficult for the office to just fix a contract problem, obviously. So that's all, just a comment. Just a comment for you to think about.

**MR. O'DELL:** Okay, well I know, I understand, was when [unintelligible] I had contacted the Ombudsman. I sent letters to the Ombudsman before he was there. I said all these things. And the Ombudsman looks at in a reasonable fashion. And when it comes to money, it's not the same as being in good faith, it's about money. And it's—money is a powerful thing and it makes people do things a certain way. And people act differently when the money is in front of them or if they think you're making money. [Unintelligible].

**MR. SHEPARD:** Right, right. Well, thank you for your comments.

**MR. O'DELL:** Thank you.

**MR. SHEPARD:** Ms. Pena?

**MS. MARGO PENA:** Good morning and thank you for your time. I have a question I'd like to ask the panel. What prompted this meeting?

**MR. SHEPARD:** We are mandated to do these meetings throughout the year in the United States. And it's time for Region 6 to have one. Our last one was in November in Little Rock, Arkansas. We wanted to have one in Texas this month and District Director Alvarez was gracious enough to host it. It's really just; it was time to have one.

**MS. PENA:** Very much so, very much needed.

**MR. SHEPARD:** Good.

**MS. PENA:** And very much appreciated.

**MR. SHEPARD:** Good.

**MS. PENA:** My name is Margo Pena and I'm the President of Margo Enterprises, a minority, woman-owned, small disadvantaged business. My company was in the United States Small Business



Administration 8A program until the summer of last year. I have been in business for 28 years and I am in the business of interior design and build construction.

My problems are very similar to Mr. Howry's. I am here today because of my strong feelings about the treatment of my firm by the United States Air Force on two particular SABER contracts. SABER stands for Simplified Acquisition of Base Engineering Requirements.

Since I graduated from the United States Small Business Administration's 8A program last summer, I have been in the process of performing these two contracts, one at Lackland Air Force base and one at Laughlin Air Force base. Margo's is near completion of both contracts. While Margo's has been performing other contracts, my focus today is on the SABER contract at Laughlin Air Force base and Lackland Air Force base.

It is my perception that Margo's has been unfairly and improperly treated by the United States Air Force. In particular with respect to the SABER contract at Laughlin Air Force Base, Margo's received an 8A full force award of [unintelligible] on a delivery order for a design and construction of an education center from the ground up. The education center project was bid utilizing the design/build process.

Margo's submitted a line item proposal reflecting the prices of components for constructing the education center. The deliver order states on its face that Margo's is to provide an enhanced design of an education center and incorporate into the construction in accordance with the SABER specifications the statement of work and the contractor's proposal.

However, the United States Air Force has taken the position that it was not Margo's line item proposal that was referenced in the delivery order, but rather the technical proposal. This distinction is important because Margo's did not include in its line item proposal a sufficient price to cover installation of certain communications work desired by the United States Air Force. It was very clear from the face of Margo's line item price proposal that there was an insufficient price proposed to cover the communications work desired by the Air Force.

Notwithstanding the circumstance the United States Air Force ordered Margo's to perform the communications work in the construction of the education center delivery order. The government's position is that the communications work was part of the delivery order and that Margo's agreed to a firm, fixed price.

In the midst of this struggle, a cure notice was issued by the United States Air Force to Margo's on February the 28<sup>th</sup>, 2006. Margo's had only ten days to respond with the due date being March the 10<sup>th</sup>, 2006.

While developing an extensive response, responding to the cure notice, which is a threat by the government that the contractor is in danger of receiving a termination or default on the contract, Margo's received a modification 7, that from Margo's perspective showed that the United States Air Force never intended to terminate Margo's delivery orders for default because the modification added work and days to the delivery order completion date.

Margo's has incurred extensive attorney's fees, time and resources to respond to the cure notice and still had to proceed with responding to the cure notice because the United States Air Force did not rescind the cure notice. Modification 7 contained clauses that were not applicable to the type of contract under which Margo's was performing.

In this regard, Modification 7 contained an inapplicable limitation of government liability clause and in essence unilaterally set a maximum amount of its own liability. In other words the government ordered Margo's to do additional work and set a limitation on the price for that work. Moreover, modification 7 states that Margo's is not authorized to make expenditures or incur obligations exceeding 75% of a not-to-exceed amount. Margo's does not have a sophisticated accounting program that would be able to effectively and timely track such costs with the specifics being ordered by the government.

With the cure notice response behind Margo's now, Margo's then had to turn addressing the wholly improper and unfair nature of modification 7 and how it impacted Margo's. Once again, my firm felt it necessary to obtain legal counsel to assist in resolving this unfortunate circumstance. This is tragic and wasteful because the United States Air Force should have been partnering with Margo's, not threatening, ordering and sending mixed improper communications to Margo's.

Three business days before the end date of the delivery order, the government has now issued a suspension of work on that job order. I would also like to read to you the release language that was routinely contained in the modifications for the Laughlin SABER contract. To Margo's it indicates just how badly my firm was treated. It should not be an absolute necessity to incur the expense of legal counsel to protect a small disadvantaged minority woman owned business from the actions of the United States Federal Government.

Here is the language that routinely appeared in the modifications related to the work at Laughlin Air Force Base and which Margo's was urged by the government to sign. "Pursuant to the terms of this contract and in consideration of the changes specified above, the government of the United States, its officers, agents and employees are hereby fully and finally released and discharged from all liability,

demands, obligations, requests for equitable, contractual or administrative nature while the contractor or a sub-contractor or supplier has or may have now or in the future arising under or relating to this modification of the contract, or its resulting impact on any sub-contract, delivery order or taxing [phonetic] including any and all impact and delay claims, claims for absorbed and unabsorbed overhead and any amounts that may be due under the Equal Access To Justice Act. In contrast in federal acquisition regulations, 443.204C, contracting officers are told that they should include any supplemental agreements or modification a release similar [unintelligible] in consideration of the modification agreed to herein complete equitable adjustment for the contractor's and then they ask for a description, proposal for adjustment, the contractor hereby releases the government from any and all liability under this contract and further equitable adjustments attributable to such acts and circumstances giving rise to the proposal for adjustment except for blank. “

The foregoing Laughlin [unintelligible] release language when compared to the far [phonetic] release language speaks volumes to my firm. It embodies the improper and unfair treatment by the government. This treatment has caused damage to my firm.

Turning now to the Lackland SABER contract, again I perceive the United States Air Force has treated my firm unfairly. The Air Force assessed liquidated damages against Margo's on many delivery orders. Margo's maintains that the assessment of a good portion of the liquidated damages was not proper, but punitive.

Two clear examples include delivery orders that had to fabricate and install two sets of stairs on separate buildings, however, Margo's first sub-contractor; a field fabricator reported that the buildings were not square. This sub-contractor fabricated the stairs twice, but to no avail. Finally the third sub was able to conquer the problem, but at my expense.

The delay caused by these unforeseen problems did not cause any actual damage to the government because Margo's worked on one set at a time, permitting access at all times. Yet notwithstanding the additional cost suffered by my firm to complete the project, the government still assessed liquidated damages.

Moreover, Lackland, Lackland still continues to withhold funds from Margo's invoices. Margo's tried to explain in writing its position, but the government has declined to waive or rescind the liquidated damages assessed. Margo's respectfully requests that some action be taken, or training be provided to contracting activities, which raises their awareness of how not to take advantage of small business, disadvantaged minority owned women businesses such as mine.

It should not be a battle to perform work for the United States Federal Government. Such battles increase the cost not only to the government, but ultimately to the taxpayer. On the other side, good contractors may choose not to contract with the United States Federal Government because of the sheer cost and unfair environment in which such work is to be performed. Thank you.

**MR. SHEPARD:** Thank you for your comments, Ms. Pena. Now do—you submitted comments and details on both of these deals.

**MS. PENA:** Yes.

**MR. SHEPARD:** And are they separate for each of your contracts?

**MS. PENA:** Two different contract offices. And to SBA.

**MR. SHEPARD:** Okay to the Ombudsman's office.

**MS. PENA:** No.

**MR. ALVAREZ:** We don't have copies of it. If we can...

**MS. PENA:** Yes.

**MR. SHEPARD:** If we can get a comment form filled out and then the substantiation, the detail, on the Laughlin SABER contract, there was liquidated damages assessed, so the claim of an unfair penalty certainly understand that. And then it sounds like the other contract with the cure notices still. You've obviously, uh...

**MS. PENA:** The work has been suspended.

**MR. SHEPARD:** Okay. So, so that would be a separate issue and I'd just address that in a separate comment form because those are really two separate contracts and then this office and the staff in Washington, of course, look forward to receiving those.

**MS. PENA:** Something that bothers me, a question that I have is why the contracting officers have been given carte blanche authority when they issue a directive that means that, god has spoken. And that you have to hire an attorney to fight them against the directive—

**MR. SHEPARD:** [Interposing] Sure. I understand. I think part of the objective of this office and it took until 1996 for it to be created was there certainly are situations with federal government agencies and the people who work there. They're given a tremendous amount of power by our United States Government and Congress and we the people that elect Congress ultimately sets the way the power gets bills that are written and the only way we can change that is to have Congress change those bills and to change the process. So by hearing

comments like yours is one of the ways that we can do that collectively as a nation.

**MS. PENA:** And what has happened to the fading power of the SBA. Can you answer that?

**MR. SHEPARD:** Boy that's a—

**MS. PENA:** [Interposing] When the SBA steps in and says Mrs. So-and-So, Ms. Contracting Officer, we have contacted everyone involved and we have determined that you are wrong. You are wrong and the contractor is right. And she still proceeds on; she still takes the position that she is god. And she can do anything that she wants.

**MR. SHEPARD:** Right. Yeah, no it's frustrating, I certainly understand. If you would, are those written statements that you have?

**MS. PENA:** Yes.

**MR. SHEPARD:** If you could, we'll get into that.

**MR. OWENS:** We certainly appreciate your comments.

**MS. PENA:** Thank you.

**MR. OWENS:** And the time to speak with us.

**MR. SHEPARD:** I have [unintelligible] contracting, represent [unintelligible]. Mr. Juarez.

**MR. ABE JUAREZ:** Well good morning and thank you for being here and giving me the opportunity to kind of—been waiting for this, so it's kind of nice to hear about the [unintelligible]. Heard about it two days ago, so I have filled out the form and I will put my entire backup together and send it to you guys.

This, you know, I've been doing federal contracting for probably about 16 years now. I got certified in 2001 as an 8A contractor. And we do general construction, we do maintenance, we do services. You know, I work for 13 different agencies. You know, all types of work, some are 5 year contracts, 3 year contracts, specific contracts.

One agency I won't do any more work for is basically the Corp of Engineers because of 2 projects that um, I feel showed the same pattern of harassment and abuse, of, uh. The one that I've turned in a form is for a project up at Lake Whitten [phonetic]. But I'm going to go generally over some of the concerns that I have that I have and no help from anybody, um.

One of the main things that I have is like what Margo was saying and that—I've been given direction to complete work that's above and

beyond my contract, blatant, obvious, letters from my attorney, stating that.

And along with the additional work that's outside of my contract, I mean a lot of it is basically redesigning the construction documents that were given to us, because the system didn't work. So we don't get compensated for the redesign and then after we redesign the uh, the project, we're basically given directions to do the work at our cost.

The Corp will not take any responsibility. Um. Unfortunately when you argue with the Corp and try to make your statement that it's not in your scope and you should be compensated for it, the first thing they do is issue an interim MUNSAK [phonetic] which is devastating to a contractor that basically only does federal contracts. And I'm sure you guys are very aware of the Cap system.

And like I said, my thing is, it's obvious work that's above and beyond. I've had to redesign, I've had to finance these projects and complete the work. Now. Typically what happens at the end of the job, is the Corp will come in and sit down with you and say we don't want you to file a claim, we know we owe you, we want to pay you. That's wrong, and everything I'm telling you I have all the documentation in my office to prove it.

Um, one of the problems I have on this last project over at Lake Whitten was um, the first day on this job, I called my BOS Fernando to call him we're going to have problems on this job. I mean this is the first day I was on the job, and I've been doing this a long time and I just felt it. Within two weeks Fernando gets a call, shortly after that it's just getting really bad, um, we got—I'd been shut down.

I asked my BOS to attend a meeting with me, there on site to try to get this job back on track. It was a disaster. We were basically kicked off the facility, our locks were changed and Fernando was there, he experienced it first hand. Shortly after that, it was a day or two; Fernando gives me a call telling me basically that he's been told to stay out of it. He cannot travel anywhere outside of the District, so now, as a contractor I'm out there with no support.

My understanding is that the SBA is here to support me, Fernando is saying he's been told by region he can't travel. He can sit in on a teleconference, doesn't do me much good. I talked to Paul Stone of the Forth Worth District; well I mean he offered to just write with the Corp of Engineers. Basically it's a no-brainer, you know, he's not going to do much for me.

After that Fernando basically tells me there's nothing SBA can do. I've been told to tell you to get an attorney. So I go back to what the other contractors have said. Now I've got all these costs that are incurred

that really there's no need to have to spend all this money on attorneys and delays. Um.

On this particular project, um, there were a lot of issues on work that was above and beyond my scope. There were also a lot of issues that put my employees in harm, or in referencing to confined space situations, asbestos situations, and lead situations. Um.

On this project also, this was a Corp operated, Corp owned facility. So when I do my contract, and I know I've got to deal with contract and I know I've got to deal with engineering. Everybody on this facility was involved in this job. I mean I was—in one word, I received harassment for 14 months. And plain and simple.

The job before this one, I did in San Antonio, kind of experienced the same thing where it was obvious there were unforeseen conditions, obvious underground conditions, I was given direction to do the work, and it was under my scope. This was a contract that started at \$461,000, at the end, ended up at \$750,000.

And the problem I had is I had to finance about \$175,000 that in my opinion was the Corp should have redesigned. The Corp should have asked me for proposals over all these unforeseen site conditions, get a proposal do the work. The unfortunate thing with federal contracting is I feel like the Corp of Engineers takes advantage of the power they have to direct you to do work. That's the only downfall in my opinion with federal contracting work. And they abuse it. I think it's needed, but I think it's abused. Um.

You know the one I had here in San Antonio, I did complete the project, I did pass all my inspections all my testing, and I closed out the project. The owner took possession. I was getting ready to file my claim and um, I was called in by the Corp acknowledging they owed me money. It was unforeseen site conditions, we don't want you to file a claim, and we want to pay this. I was given a \$200,000 change order after the job was complete. If that doesn't tell you something, I don't know what does.

What bothered me even more after that was before we could finalize those negotiations, the only, um, the one thing the Corp had is that really kind of upset me was they asked me what a satisfactory rating is worth to me. They used that as a negotiating tool. In my opinion I was awarded the jobs, I fixed the problems, I financed the problems, and I completed the job. I did everything per my contract and then at the end to have to pay for my, you know, satisfactory performance? I've got a problem. And the two jobs that I've done, I could show patterns, and I will show patterns of the same abuses that I've gotten from this agency.

Um, on this project I've got, it's an open contract right now. I've got

an acknowledgement they owe me money. I've got letters that they've asked me for RFPs, but they still issued liquidated damages and they've taken money from me. I don't understand that. On the job here in San Antonio, they didn't want to award it to me for whatever reason. They were telling me to go to the local office, talk to them, come over here, talk to their people here in San Antonio, come to find out, it was all, we'll go ahead and approve the award as long as you this particular sub-contractor. That's wrong, I mean in my opinion that's wrong. Um.

I believe the COE has a lack of enforcement on contract requirements. I've sent numerous letters; my attorney has sent numerous letters with no reply. You have a contracting officer who signed the contract, an APO and the contracting officer is completely gone from the contract, so [unintelligible] then she gets involved trying to settle.

Um, you know, to me, you know, unfair fine penalty, [unintelligible] non-responsive from the federal employees exist in unprofessional behaviors. Uh, currently, uh, you know what I would like to see is some assist-, um, I'm telling you I work with a lot of agencies, and I'm not a bad contractor. Fernando's known me about 17 years. I've worked for other contractors. I do my own business.

The very unfortunate part was that these two contracts almost took me out of business. They almost took me out of business. They put me behind with my bank. They put me behind with IRS. I've managed to turn it around with other government contracts that I continue to do business with and I just feel like right now there is a lot of work out there with the Corp of Engineers that I will not go after because of the experience that I've had.

And on this current one right now, I mean—we're—I've retracted my request for equitable adjustment because that's what they asked me for. I turned it in, they came back, and I was asking for \$10, they offered \$1. So I've retracted it, I'm going to go ahead and file full claim, and hopefully we can get it resolved and get some of this money back because it's just been a—it's been a rollercoaster ride for the last two and a half years.

And like I said, I've got everything documents and I'm going to simplify it and I will submit all the backup for the form that I filled out and I am going to fill out another form for this other computer project.

**MR. SHEPARD:** And that will help in the—you know detail specifically about the substantiations obviously are very important to give the office the details that it needs to ask and communicate effectively with the Corp on your behalf, so specifics about unfair fines, specifics about harassment with inspectors. You know some of the contracting issues and 8A specific, the DFC office isn't set up to help you with obviously, but certainly...



**MR. JUAREZ:** Well the harassment to me is—

**MR. SHEPARD:** Yeah, harassment, unfair [unintelligible]

**MR. JUAREZ:** I'm a big boy I can handle it you know.

**MR. SHEPARD:** Yeah, the issues we've talked about today is exactly why--

**MR. JUAREZ:** [Interposing] Right.

**MR. SHEPARD:** Why the office was created was to communicate those issues on your behalf and so thank you for commenting and thank you for asking us to—and enlisting our help to assist you to the extent that we can with all of this.

**MR. JUAREZ:** Well I appreciate your time.

**MR. SHEPARD:** Yeah, thank you very much. We appreciate it. Any other commenters? On the telephone, Ms. Caldwell are you there? Ms. Caldwell? Perhaps not. I think that's it.

[Crosstalk]

**MR. OWENS:** [Unintelligible] is our work. And I take your comments seriously either yours, or yours, Ms. Pena. And I can tell you that with the transcript and the record we have in place with your comments that have been sent into our office, we will be engaging in discussions with the respective agencies and in particular the Corp of Engineers on those concerns.

So—and that's sub-lieutenant general in Washington. His office is actually the office that receives our comments and request for review of issues. So, often you hear the government, we're here to help you, but actually we are. And we want to; we want to be that resource. So many times you're going to run the other way, but thank you for being here. This is important and we appreciate your involvement. Before you leave, I do want to make one presentation to a great chairman of your RegFair Board, coming to the end of his term. Mr. Joe Shepard. So I'd like to present you with this certificate.

[Applause]

**MR. SHEPARD:** Great, thank you. Very good.

**MR. OWENS:** Okay.

**MR. SHEPARD:** Thanks a lot.

**MR. OWENS:** No, thank you, we appreciate it. Any other comments? No?

[Crosstalk]

**MR. SHEPARD:** We'd like to adjourn it; we're done when-- with the comments if you'd like to send [unintelligible].

**MR. ALVAREZ:** Well I appreciate everybody attending. I got a call from Mr. Joe Montes who is the Regional Administrator and wishes he could be here to attend but he had some other events that he had to actually take care of, going up to Washington, so he apologizes for not being here, but he's glad that Mr. Shepard was here and Mr. Owens and Mr. Mendez and he wanted to thank you all for being here.

And I want to thank everybody for coming today to take the time out of your schedules to be able to tell these gentlemen what the issues were that you're being confronted with and let's see what we can do as a result of this, so we thank you very much. Any comments from anybody else? Before we close the comments?

And I'd like to thank our friends at UCSA, SPDC Center, and Al Salgado. Thanks Al for hosting this and giving us the opportunity and giving us the opportunity to be here at this fine facility. And for our staff for being here and again for Lucy who put a lot of work and effort into this and is temporarily ill; I believe Pam Edwards is here right now. So really, they worked months on this, Jose and Lucy and other staff people worked months on putting this to bed. And for Mr. Owens for being here and Joe thank you [unintelligible] Monday morning. Thank you all. Good-bye.

**OPERATOR:** Thank you. Please.

[END TAPE 1 SIDE A]